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REMARKS

The Examiner is thanked for allowing the subject matter of dependent Claim 31. Specifically, the Examiner has objected to Claim 31 as being dependent upon a rejected base claim, but also stated that such claim would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended such claim in this manner.

The Examiner has rejected Claims 1-9, 12, 14-22, 25, 27-30 and 32-34 under 35 U.S.C. 103(a) as being unpatentable over Kingsford et al. (U.S. Patent No. 6,574,747) in view of Chang et al. (U.S. Patent No. 6,526,433). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims. Specifically, applicant has amended the independent claims to incorporate at least a portion of the subject matter of dependent Claims 8 and 9 et al.

With respect to dependent Claims 8 and 9 et al., presently incorporated in each of the independent claims, the Examiner has relied on the following excerpts from Chang to make a prior art showing of applicant's claimed "wherein the timeout is set by adding a default value with a variable value which is set as a function of the measured network conditions."

"The most current DCE version of the timeout value provides features to set the default timeout value by the application client at runtime (i.e. such as using environment variables)." (Col. 1, lines 27-30- emphasis added)

"At block 68, an initial timeout value for the binding handle is set at this time, and the timeout value is referred to when an RPC 108 is made from the application client 10A to the application server 10B of the client/server pair." (Col. 6, lines 22-25)

"The pre-defined methods in blocks 80 and 82 are each not limited to any specific method, and any suitable method may be used for calculating an optimal timeout value. For example, one such method may be that the optimal value is calculated from a simple formula such as two times the largest value (i.e. largest response time) in the response time array. Another such method may involve a more complicated formula in which the optimal value is obtained from some type of heuristics or statistics calculation. An example of such heuristics or statistics calculation may involve tracking and obtaining the most recent twenty-five (25) elements or values (i.e. the last 25 response times) from the response time array. The average and standard deviations are computed for these response time values. The optimal value is obtained as the sum of the average plus three standard

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deviations. Of course, the "quality" of the pre-defined method determines how fine the timeout value is able to be tuned to reflect the real environment. The choice of the method also determines the size of the array. In the first example, the size of the array is just one because only the largest value needs to be tracked and stored. In the second example, the size of the array needs to be twenty five in order to track and store the twenty five most recent RPC response times." (Col. 6, line 49-Col. 7, line 5-emphasis added)

Applicant respectfully asserts that the above excerpts from Chang do not meet applicant's claim language, since Chang fails to make any suggestion of "adding a default value with a variable value," as claimed by applicant (emphasis added). The only instance where Chang teaches using a default value is with respect to multiplying a default value with a response time (see emphasized excerpt above). Still yet, Chang's disclosed "initial timeout value for binding handle is set" also does not meet applicant's claim language, since Chang further states that the binding timeout value is reset with the variable optimal timeout value (see Figure 7, item 94). In addition, such binding value is not involved in any sort of addition function including a variable value.

In addition, the only summing Chang discloses involves adding two variable values: average of response times plus three standard deviations (see emphasized excerpt above). Thus, it is clear that Chang does not disclose applicant's claimed "wherein the timeout is set by adding a default value with a variable value which is set as a function of the measured network conditions."

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

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A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

The Examiner's rejections are also deficient with respect to the dependent claims, since such rejections also do not meet at least the third element of the *prima facie* case of obviousness. For example, with respect to dependent Claim 33, the Examiner has relied on the following excerpt from Chang to meet applicant's claimed "wherein the measured network conditions are measured for an entire network segment on which a plurality of target components is located."

"It is therefore one object of the present invention to provide an adaptive timeout value setting for DCE applications wherein the timeout value setting is adapted and adjusted according to environmental factors and communication conditions between each client/server pair." (Col. 2, lines 29-33)

"It is a further object of the present invention to adjust the timeout value for each client/server pair in a dynamic fashion so that the client is able to be more adaptive to real environment changes and so that the server's performance is not degraded due to ineffective timeouts." (Col. 2, lines 43-47-emphasis added)

Applicant respectfully asserts that Chang clearly states that timeouts are determined according to each client/server pair, which *teaches away* from measuring conditions "for an entire network segment on which a plurality of target components is located," as claimed by applicant.

Further, with respect to dependent Claim 34, the Examiner has relied on Figure 4 and the following excerpt from Chang to make a prior art showing of applicant's claimed "wherein the source is capable of reducing a latency of the risk-assessment scan by setting the variable duration to a minimal value, while avoiding the abandonment of vulnerable systems reachable over high latency networks by increasing the variable duration to accommodate such scenarios."

"With reference now to the figures and in particular with reference to FIG. 4, a flow chart of the general method 50 for implementing and providing the present invention, adaptive timeout value setting of a client/server pair for DCE applications, is shown. This method 50 is separately implemented and executed for each client/server pair. The general method 50 is preferably implemented at and by the additional module 110 of FIG. 3." (Col. 5, lines 49-56)

Applicant respectfully asserts that the above excerpt from Chang merely teaches implementing an adaptive timeout value for each client/server pair, but not such that "the source

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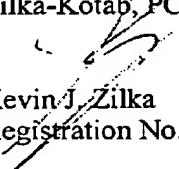
is capable of reducing a latency of the risk-assessment scan by setting the variable duration to a minimal value, while avoiding the abandonment of vulnerable systems reachable over high latency networks by increasing the variable duration to accommodate such scenarios," as claimed by applicant.

Since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or a specific prior art showing of all of the claim limitations, in the context of the remaining elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P008/01.113.01).

Respectfully submitted,
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